

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Data (Use and Access) Bill

April 2025



1. Background

The UK Government's Data (Use and Access) Bill

1. The Data (Use and Access) Bill¹ (the Bill) was introduced into the House of Lords and had its first reading on 23 October 2024. It is sponsored by the Department for Science, Innovation and Technology.

2. The Explanatory Notes to the Bill state:

"This Bill is intended to harness the power of data for economic growth, support a modern digital government, and improve people's lives."²

3. The long title to the Bill states that it is a Bill:

"... to make provision about access to customer data and business data; to make provision about services consisting of the use of information to ascertain and verify facts about individuals; to make provision about the recording and sharing, and keeping of registers, of information relating to apparatus in streets; to make provision about the keeping and maintenance of registers of births and deaths; to make provision for the regulation of the processing of information relating to identified or identifiable living individuals; to make provision about privacy and electronic communications; to establish the Information Commission; to make provision about information standards for health and social care; to make provision about the grant of smart meter communication licences; to make provision about the disclosure of information to improve public service delivery; to make provision about the retention of information by providers of internet services in connection with investigations into child deaths; to make provision about providing information for purposes related to the carrying out of independent research into online safety matters; to make provision about the retention of biometric data; to make provision about services for the provision of electronic

¹ The Data (Use and Access) Bill, as introduced

² Explanatory Notes to the Data (Use and Access) Bill, as introduced

signatures, electronic seals and other trust services; and for connected purposes.”³

4. The Bill completed its passage through the House of Lords on 5 February 2025 and had its first reading in the House of Commons on 6 February 2025. Committee stage in the Commons concluded on 4 March 2025. At the time of writing this report, a date for Report stage and third reading was yet to be confirmed.

The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales that has regard to devolved matters.

6. On 2 January 2025, Rebecca Evans MS, the Cabinet Secretary for Economy, Energy and Planning (the Cabinet Secretary), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁴

7. We took evidence from the Cabinet Secretary on the Memorandum on 3 February 2025.⁵

8. We reported on the Memorandum on 7 March 2025 (our first report).⁶

9. Paragraphs 14 to 16 of our first report set out the provisions of the Bill which, at the time, the Welsh Government considered to require the Senedd's consent.

10. Paragraphs 17 to 27 of our first report describe the delegated powers in the Bill which are conferred on the Secretary of State, the Treasury, and the Welsh Ministers to act in devolved areas.

11. Paragraphs 28 to 32 of our first report set out the Welsh Government's position on the Bill, as set out in the Memorandum.

12. Paragraphs 33 to 75 of our first report highlight the evidence we took from the Cabinet Secretary on the Memorandum.

³ The Data (Use and Access) Bill, as introduced, page 1

⁴ Welsh Government, [Legislative Consent Memorandum, The Data \(Use and Access\) Bill](#), January 2025

⁵ [Legislation, Justice and Constitution Committee](#), 3 February 2025

⁶ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memorandum on the Data \(Use and Access\) Bill](#), March 2025

13. Our first report contained seven conclusions and six recommendations.

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2)

14. The Cabinet Secretary laid a Supplementary Legislative Consent Memorandum in respect of the Bill on 12 March 2025.⁷

15. Memorandum No. 2 relates to amendments tabled to the Bill for House of Commons Committee stage, which commenced on 4 March 2025.

16. The Business Committee agreed that the following Committees should report on Memorandum No. 2 by 2 May 2025⁸:

- the Culture, Communication, Welsh Language, Sport and International Relations Committee;
- the Economy, Trade, and Rural Affairs Committee;
- the Climate Change, Environment, and Infrastructure Committee;
- the Equality and Social Justice Committee; and
- the Legislation, Justice and Constitution Committee (the Committee).

Update on the position since the publication of the Memorandum, and provisions for which the Senedd's consent is required

17. The Welsh Government's view set out in the Memorandum (laid in January 2025) was that the Senedd's consent was required for clauses 1 to 13 and 18 to 26 (in Part 1 – Access to Customer Data and Business Data), clauses 45, 47 and 49 (in Part 2 – Digital Verification Services (DVS) - Information Gateway), clauses 56, 57, 60(1) and Schedule 1 (in Part 3 – National Underground Asset Register (NUAR)), and clause 121 (in Part 7 – Information to improve public service delivery).

18. At paragraphs 7 to 15 of Memorandum No. 2, the Cabinet Secretary provides an update on the Welsh Government's position since the publication of the Memorandum.

⁷ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Data (Use and Access) Bill, March 2025

⁸ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Data (Use and Access) Bill, March 2025

19. The Cabinet Secretary confirms that officials from the Welsh and UK governments have continued to have regular contact on the Bill, including specific parts relating to Access to Customer Data and Business Data, Digital Verification Services and the NUAR.⁹

20. At paragraph 8 of Memorandum No. 2, the Cabinet Secretary states:

"The following government amendments, tabled on 26 February, were assessed by Welsh Government as requiring legislative consent of the Senedd:

- Amendments 1, 2, 3 and 5, which amend Part 1, clause 8 – Enforcement of Regulations*
- Amendment 6, which amends Part 1, clause 10 – Financial penalties."*

21. The amendments extend the scope of who can impose conditions for authorisation or approval to receive customer data or business data beyond decision-makers, make provision for the first time in respect of the publication or production of documents, and add an additional provision conferring express power to make provision about the treatment of penalties paid to enforcers (in order to be consistent with similar powers in clauses 11(1)(b) and 12(1)(b)).¹⁰

22. At paragraphs 12 and 15 of Memorandum No. 2 the Cabinet Secretary states:

"The need for legislative consent for Part 1 of the Bill, including clause 8, was set out in the LCM laid on the Bill on 2 January. As amendments 1,2,3 and 5 amend clause 8 by extending the scope of enforcement regulations, an SLCM is required for these amendments. (...)

The need for legislative consent for Part 1 of the Bill, including clause 8 [sic]¹¹, was set out in the LCM laid on the Bill on 2 January. As amendment 6 makes provision about what must, or may, be done with penalties for the first time, an SLCM is required for this amendment."

⁹ Memorandum No. 2, paragraph 7

¹⁰ Memorandum No. 2, paragraphs 11 and 14

¹¹ We believe this should refer to clause 10.

23. At paragraph 16 of Memorandum No. 2 the Cabinet Secretary confirms that the UK Government's position as regards which provisions of the Bill engage the legislative consent process has not changed since the laying of the Memorandum.

24. At paragraphs 17 to 21 of Memorandum No. 2, the Cabinet Secretary states:

"The Welsh Government remains supportive of the UK Government's policy intent behind the Bill, which was summarised in the first LCM laid on the Bill.

The vast majority of the provisions within the Bill relate to the reserved matters reserved under the data protection reservation, the sale and supply of goods and services to consumers reservation, the telecommunications reservation and the reservation for the registrations of births, deaths and places of worship, as set out in Schedule 7A to the Government of Wales Act 2006.

The previous LCM outlined concerns in relation to the devolved implications of the following provisions:

- Part 1, Access to Customer Data and Business Data, clauses 1-13 and 18-26;*
- Part 2, Digital Verification Services, clause 49; and,*
- Part 3 - National Underground Asset Register, clauses 56, 57, 60(1) and Schedule 1.*

Concerns remain in relation to the impact the Bill may have on the UK's Data Adequacy status, as set out in the first LCM laid on the Bill.

Discussions with the UK Government on these matters, at both Ministerial and official level, are ongoing."

25. The Cabinet Secretary concludes:

"It is my view that it is appropriate to deal with these provisions in this UK Bill, as the Bill represents the most effective way for these provisions to come into force.

Whilst the Welsh Government is supportive of the policy intent behind the Bill, there remain concerns from a constitutional perspective as outlined in paragraphs 19-20.

We are continuing to engage positively with UK Government at both Ministerial and official level on the role of the Welsh Ministers and the Senedd within the Bill on these matters.

I will provide further updates to the Senedd on the Welsh Government's position in relation to the Bill following further engagement with UK Government."¹²

2. Committee Consideration

26. We considered Memorandum No. 2 at our meeting on 24 March 2025.¹³

27. We agreed our report at our meeting on 31 March 2025.¹⁴

Our view

Legislative consent

28. We note the Welsh Government's assessment of the amendments to the provisions within the Bill that require the consent of the Senedd, as set out in Memorandum No. 2.

29. We also note that there continues to be differences of opinion between the Welsh and UK governments as regards which provisions in the Bill require the Senedd's consent.

Conclusion 1. We continue to agree with the Welsh Government's assessment, as set out in the Memorandum and Memorandum No. 2, of the provisions within the Bill (and amendments to those provisions) which require the consent of the Senedd in accordance with Standing Order 29.

30. We further note that the Cabinet Secretary again has not, in Memorandum No. 2, expressly stated the Welsh Government's position as to whether the Senedd's consent should be granted to the relevant provisions in the Bill.

¹² Memorandum No. 2, paragraphs 23 to 26

¹³ ~~Legislation, Justice and Constitution Committee~~, 24 March 2025

¹⁴ ~~Legislation, Justice and Constitution Committee~~, 31 March 2025

Comments on Part 1 of the Bill – Access to Customer Data and Business Data

31. We note that the amendments made to Part 1 of the Bill, which are the subject of Memorandum No. 2, extend the scope of who can impose conditions for authorisation or approval to receive customer data or business data beyond decision-makers, widen the scope of the existing regulation-making powers in respect of the publication or production of documents, and add an additional provision conferring express power on the Secretary of State and the Treasury to make provision about the treatment of penalties paid to enforcers.

32. We also note that the Cabinet Secretary continues to be supportive of the policy intent behind Part 1 of the Bill, notwithstanding the fact that the Welsh Government's concerns with the powers delegated to the Secretary of State and HM Treasury in Part 1 of the Bill do not appear to have been resolved.

33. In our first report we asked the Cabinet Secretary to update us and the Senedd as soon as possible on the specific changes to Part 1 of the Bill that are being sought by the Welsh Government, and to provide details of the progress of discussions with the UK Government.¹⁵ It is disappointing that no information has been provided to us by the Welsh Government.

Comments on Part 2 of the Bill (Digital Verification Services (DVS)) and on Part 3 of the Bill (National Underground Asset Register (NUAR))

34. We note that the Cabinet Secretary continues to be supportive of the policy intent behind Parts 2 and 3 of the Bill, again notwithstanding the fact that the Welsh Government's concerns with a number of provisions in these Parts also appear to have not been resolved.

35. We also asked the Cabinet Secretary, in our first report, to update us as soon as possible on the specific changes to Parts 2 and 3 of the Bill that are being sought by the Welsh Government. Again, no information has been provided to us, and this is disappointing.

36. We re-iterate our concerns expressed in conclusions 5 and 6 of our first report:

“Conclusion 5. We do not consider that the new regulation-making powers provided to the Secretary of State in the new

¹⁵ Report on the Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill, Recommendation 2

National Underground Asset Register provisions are appropriate.

Conclusion 6. The revocation of Senedd agreed secondary legislation, namely the Street Works (Records) (Wales) Regulations 2005, and extension of the equivalent regulations in England to Wales is inappropriate."

UK-EU obligations

37. In our first report we noted the assurances provided to us by the Cabinet Secretary that the Welsh Government is of the view that the Bill is compliant with the UK-EU Trade and Co-operation Agreement (TCA).

38. We also noted the Welsh Government's view that the Bill could signal the beginning of the UK's divergence from the data protection regime currently in place across the EU by diluting the protections provided by UK legislation.

39. In our first report we noted that the Memorandum did not contain an assessment of the Bill's interaction with the TCA, in line with the Welsh Government's previous commitments, and that this was subsequently provided in separate correspondence from the Cabinet Secretary. Memorandum No. 2 does not include an updated assessment of the impact of the amendments made to the Bill on the TCA.

Recommendation 1. The Cabinet Secretary should provide an updated assessment of the impact of the Bill on the UK-EU Trade and Co-operation Agreement, confirming the Welsh Government's view on whether the amendments that are the subject of Memorandum No. 2 modify its initial assessment.

Recommendation 2. The Cabinet Secretary should ensure that a UK-EU Trade and Co-operation Agreement assessment is included in all future memoranda for the Bill, in line with previous commitments given by the Welsh Government.

Recommendation 3. The Cabinet Secretary should confirm the Welsh Government's view on whether the amendments that are the subject of Memorandum No. 2 reduce or increase the likelihood of divergence between the UK and the EU on data protection.

40. In our first report we also said that there was uncertainty as to what extent these matters have been discussed at relevant intergovernmental forums, in particular the Interministerial Groups on UK-EU relations and on trade.

41. We asked the Cabinet Secretary to clarify whether the UK-EU dimensions of the Bill are being discussed at relevant intergovernmental forums, and requested a summary of those discussions.¹⁶

42. We also asked the Cabinet Secretary to outline to the Senedd the renewal process for the UK's data adequacy decision.¹⁷ On this matter, on 18 March 2025, the European Commission announced a proposal to extend the UK's data adequacy by six months, to 27 December 2025, to allow time for the legislative process on the Bill to conclude in the UK Parliament. We note that the European Commission's announcement stated "Once the UK's legislative process on the Data Bill introduced in the UK Parliament on 23 October 2024 concludes, the Commission will assess whether the UK continues to provide an adequate level of protection for personal data. If that assessment is positive, the Commission will propose to renew the UK adequacy decisions."¹⁸

43. As with the other recommendations in our first report, no information has been provided to us by the Cabinet Secretary as yet.

Intergovernmental working and resolving constitutional concerns

44. We note that officials from the Welsh and UK governments have continued to have regular contact on the Bill as it has progressed through the UK Parliament.

45. In our first report we concluded that the time it took the Welsh Government to lay the Memorandum gave us concerns that any supplementary legislative consent memoranda may not be laid in a timely fashion. We also expressed a concern that Senedd Committees will not be afforded sufficient time to fully consider a supplementary memorandum which may be required if significant changes are proposed or made to the Bill.¹⁹

¹⁶ Report on the Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill, Recommendation 5

¹⁷ Report on the Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill, Recommendation 6

¹⁸ European Commission, [Daily News 18 / 03 / 2025](#), 'Commission proposes to extend adequacy decisions for the UK by six months for free and safe data flows'

¹⁹ Report on the Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill, Conclusion 3

46. As such, we recommended that the Cabinet Secretary should ensure that any supplementary legislative consent memoranda, which may be required because of amendments being proposed or made to the Bill in the UK Parliament, are laid before the Senedd as soon as possible to give Senedd Committees the best possible chance of considering the legislative changes as they apply to devolved matters.²⁰

47. That recommendation was partly borne out of the uncertainty as to why significant constitutional issues were not addressed and resolved before the Bill was introduced to the UK Parliament.²¹

48. As we highlight in the paragraphs above, none of the significant concerns expressed by the Cabinet Secretary in the Memorandum, or by us in our first report, have been addressed by the amendments to the Bill which are the subject of Memorandum No. 2.

49. The Bill has reached its final amending stage in the second House, and the Senedd is about to begin a three week recess period. The Welsh Government currently proposes holding a debate on a legislative consent motion for the relevant provisions in the Bill on 6 May²²; this date is in the second week of term following the Easter recess period.

50. Should further amendments to the Bill be agreed which impact on devolved matters – whether those amendments address the already-known concerns or not – the Senedd will have no meaningful time or opportunity to scrutinise their impact on, or appropriateness for, Welsh citizens.

51. In our recent report on the Welsh Government's Visitor Accommodation (Register and Levy) Etc. (Wales) Bill, we said that we are concerned that the Welsh Government's legislative programme has become dysfunctional and that this is impacting negatively on Senedd scrutiny of proposed primary legislation.²³

Conclusion 2. We are concerned that the Welsh Government's handling of Bills introduced to the UK Parliament which make provision that has regard to devolved matters is increasingly flawed and inadequate.

²⁰ Report on the Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill, Recommendation 1

²¹ Report on the Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill, Conclusion 4

²² Senedd Cymru, [Business Statement and Announcement](#), 25/03/2025

²³ Legislation, Justice and Constitution Committee, [Report on the Visitor Accommodation \(Register and Levy\) Etc. \(Wales\) Bill](#), March 2025, paragraph 59

Recommendation 4. The Cabinet Secretary should respond to the recommendations in our Report on the Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill, and to recommendations 1 to 3 in this report, by 24 April 2025.